

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
vs.	)	CAUSE NO. 1:18-cr-0103-SEB-DML
	)	
MICHAEL A. MONTGOMERY,,	)	
Defendant.	)	- 01

**REPORT AND RECOMMENDATION**

On January 2, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on October 11, 2018. Defendant appeared in person and by FCD counsel Michael Donahoe. Government represented by AUSA Lindsay Karwoski. USPO represented by Jason Nutter.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Montgomery of his rights and ensured he had a copy of the Petition. Defendant Montgomery waived his right to a preliminary hearing on December 26, 2018. [Dkt. 56.]
2. After being placed under oath, Defendant Montgomery admitted violations 1, 2, 3, and 4 as set forth in the Petition. [Dkt. 50.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation  
Number**

**Nature of Noncompliance**

1

**"You shall notify the probation officer within 72 hours of being arrested, charged or questioned by a law enforcement officer."**

On September 30, 2018, this officer was contacted by an officer with Indianapolis Metropolitan Police Department to report having had contact with the offender. The officer advised he was dispatched to a hotel on a report of the offender being too aggressive with his son. The officer responded to the hotel, spoke with the offender and left the location without incident. The officer advised that during his contact with the offender, he told him he was visiting someone at the hotel that evening, and he and his son were just playing. A short time later, a second call for police assistance was requested at the same hotel for the same reason. Upon officers return to the hotel, they reviewed the video at the hotel, which showed the offender and a female getting into a physical altercation. During that altercation, the offender put his minor child in what appeared to be a choke hold. The officer did not have contact with the offender during the second run to the hotel, but filed a report of alleged strangulation charges and forwarded the report to the child abuse division for further investigation. The status of this matter is presently unknown. This officer to date has not received a call or notification from the offender about his police contact on September 30, 2018.

2

**"You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence. When prior notification is not possible, you shall notify the probation officer within 72 hours of the change."**

On October 2, 2018, this officer attempted to make contact with the offender by four different phone numbers on file. The offender's phone and the residence phone were shut off. A message was left on his girlfriend's phone requesting he contact his officer. When no return call was received from the offender, this officer conducted a home visit at his residence on October 3, 2018, and found the residence to be vacant. This officer made contact with a neighbor who advised the family in the offender's house had moved out at least one week earlier. The offender has no[t] made contact with this officer to report a change of address. This officer went to the residence on that date to address the police contact on September 30, 2018. The offender's whereabouts are presently unknown.

3

**"You shall refrain from any unlawful use of a controlled substance."**

Following the imposition of sentence to time served, the offender reported to the office to meet with a probation officer and a urine specimen was

collected that yielded positive for cannabinoids. On August 23, 2018, when confronted about the positive test he admitted smoking marijuana in July 2018, while on pretrial services supervision. A specimen submitted on August 30, 2018, returned positive for cannabinoids. The offender admitted using marijuana on or about August 10, 2018.

4        **"You shall not attempt to obstruct or tamper with the testing methods."**

On August 30, 2018, during an appointment with this officer, Mr. Montgomery admitted drinking excessive amounts of water in an attempt to clear his system of marijuana. He admitted he last smoked marijuana on August 10, 2018, and was not honest with this officer on August 23, 2018, when she confronted him about the positive test result from the date of sentencing. The collection submitted on August 30, 2018, was very clear in color; however, did not return diluted but positive for marijuana.

4.        The Court finds that:

- (a)        The highest grade of violation is a Grade C violation.
- (b)        Defendant's criminal history category is I.
- (c)        The range of imprisonment applicable upon revocation of supervised release, therefore, is 3 to 9 months' imprisonment.

5.        The parties jointly recommended a sentence of five (5) months imprisonment, with twelve (12) months of supervised release to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, recommends that the Court find that Defendant violated the conditions set forth in the Petition, that his supervised release be revoked, and that he be sentenced to the custody of the Attorney General or his designee for a period of five (5) months, with twelve (12) months of supervised release to follow. Defendant shall continue to abide by the conditions of supervised release set forth in the August 24, 2018 Judgment. [Dkt. 44 at 3-4.]

Defendant Montgomery is to remain in custody pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 2 JAN 2019

A handwritten signature in black ink, appearing to read "Mark J. Dinsmore", written over a horizontal line.

Mark J. Dinsmore  
United States Magistrate Judge  
Southern District of Indiana

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USMS

USPO